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BRIEF FOR RESPONDENT IN OPPOSITION

IN THE

Supreme Court of the United States

TERM, 1971

No. 71-1067

PAUL JOSEPH RILEY and
ALAN MARK SILBERGELD, *Petitioners*,

v.

DISTRICT OF COLUMBIA, *Respondent*.

On Petition For A Writ Of Certiorari To The District Of Columbia Court Of Appeals

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BRIEF FOR RESPONDENT IN OPPOSITION

QUESTIONS PRESENTED

1. Whether this Court should exercise its jurisdiction to review by writ of certiorari a District of Columbia Court of Appeals judgment involving a misdemeanor conviction under a statute of purely local application and significance.

2. Whether the provisions of D. C. Code, § 22-1107 (1967), which proscribe disturbance of a religious congregation during worship as construed by the District of Columbia Court of Appeals, are unconstitutionally vague or overbroad.

COUNTER-STATEMENT OF THE CASE

In informations filed in the District of Columbia Court of General Sessions, Criminal Division, petitioners were charged with molesting and disturbing a congregation engaged in a religious exercise, on August 10, 1969, at the Blessed Sacrament Church in Washington, D. C. (R. 17, 26, 34). Upon their plea of not guilty, petitioners were tried, found guilty, and sentenced to pay a fine of $100 (R. 34, 41, 349). Thereafter, petitioners appealed to the District of Columbia Court of Appeals which, on November 24, 1971, affirmed the judgments of conviction. *Bible et al. v. District of Columbia*, D. C. App., 283 A. 2d 819 (1971). On February 18, 1972, there was filed in this Court a petition for a writ of certiorari to the District of Columbia Court of Appeals.

The evidence adduced at trial was, in substance, as follows:

Sometime prior to August 10, 1969, certain parishioners and priests at the Blessed Sacrament Church learned of disruptions which had recently occurred, instigated by certain members of a group known as the Center for Christian Renewal, at services held following a Mass at St. Matthews Cathedral (R. 26, 31, 78, 90, 165). In anticipation that a similar attempt might be made to disrupt their Mass, several members of the parish council and the pastor of the Blessed Sacrament Church, Father Quinn, prepared a written statement to be read at the Mass when and if this allegedly disruptive group entered their church (R.

35-37, 52, 56, 58, 76-78, 86). The prepared statement is as follows:

> "We are sorry to have to inform the congregation that members of the group which has been causing the disturbances during and following Mass at St. Matthew's Cathedral in recent weeks have assembled here this morning. Some may already be seated in the pews among you.
>
> "They were advised outside that the law of the District of Columbia makes it a misdemeanor to create a disturbance during the course of a religious service; that any person engaging in such a disturbance be subject to arrest; that creation of a disturbance in this church during any Mass or service—by deliberately standing at an improper time, by addressing the congregation; moving about or occupying the aisles, by distributing printed materials, or by any other disruptive action will meet with prompt arrest. The police have been advised of the possibility of disturbances and are present. We sincerely hope that the leaders of the assembled group will heed this warning and that there will be no disturbance. Should one actually occur, we will regretfully ask that appropriate arrests be made. Every effort will be made to do this quietly and with a minimum of disruption to the Mass. Again, we hope this will not be necessary; but, should it be, we ask our parishioners and ushers to remain quietly in your places without becoming involved. We hope you all share our desire that no disturbances will take place." (R. 36-37.)

At the 12:55 p. m. Mass on August 10, 1969, certain strangers were observed amongst the congregation who

were identified as "members of the group which has been causing disturbances during and following Mass at St. Matthew's Cathedral" (R. 36, 58, 99). In accordance with the prearranged plan, the lay reader read the above-described announcement to the congregation (R. 33-37).

Following the reading of this announcement, unusual apprehension and uneasiness were manifested by the congregation (R. 100). "* * * [A]ll the way through the Mass there was a general commotion and anticipation and expectation of something happening" (R. 192, 194).

During the offertory part of the Mass, just after the washing of the hands by the priest and while he was advancing to the center of the altar for prayer (R. 56, 57), petitioners Riley and Silbergeld got up from their seats and began to pass out leaflets to members of the congregation (R. 38, 57, 79, 100, 113, 173, 192, 195, 213). The text of the leaflets accused the parishioners and clergy of the Blessed Sacrament Church of following "racist policies" (Gov't. Ex. No. 2). The lay reader testified that petitioners "were practically throwing" the leaflets into the pews and, "in many cases, * * * [he] could see people pushing them back" (R. 39). The officiating priest also testified that petitioners "were literally throwing the leaflets in the pews" (R. 57; see also: R. 79).

While the leaflets were being thus distributed by petitioners, the officiating priest went to the lectern and announced to the congregation: "I fear that the disturbance we expected is happening" (R. 57-58). He then asked petitioners to cease their distribution (R. 49, 79, 102-103, 107). Thereafter, he remained silent for a brief period waiting for them to stop. An unidentified woman in the congregation stood up and shouted: "Isn't anybody going to do anything? Officers, officers—arrest these people." (R. 192; see also: R. 90, 101, 169, 173, 195, 214, 224.). Thereupon, petitioners hurried out onto the steps of the church where they were, upon the specific request of Father

Quinn, arrested by police officers who, by prearrangement, were present at the church (R. 36, 79, 114, 117-118).

A number of the people present at the Mass testified that they were disturbed by the occurrence. The lay reader, George Schaeffer, testified that when the Mass was interrupted he feared that there might be violence (R. 38, 40). Father Liston, the celebrant of the Mass, testified that when the Mass was halted by petitioners' activities, he became quite disturbed and nervous (R. 55, 59). His hands began to shake so that he could not hold them together in a position of prayer (R. 59).

Father Quinn characterized the disturbance, saying:

> "It was rather frenzied, actually, on the part of these men [petitioners], the activity, disrupting the services, and causing the Mass to stop, and causing great agitation among the people in the Church. And people were very greatly agitated by this commotion in the Church." (R. 80.)

Mary Ingold, a worshipper at the Blessed Sacrament Church at the time, testified that the disturbance made praying impossible, saying:

> "* * * [T]he offertory is the principal part of the Mass, and it is the part of the Mass where you are supposed to concentrate and pay attention to what is going on; and you offer up your prayers and your offering, along with the priest. And I was distracted—and you just cannot concentrate when you are distracted. * * *" (R. 108-109.)

Patricia Tanner, also a worshipper at the church at the time of the disturbance, testified that an unidentified woman in the congregation jumped up and said: "Isn't anybody going to do anything? Officers, officers—arrest these

people," and thereafter ran down the aisle in a very agitated state (R. 192).

Two other worshippers, witnesses for petitioners, who identified themselves as members of the group known as the Center for Christian Renewal, testified that no disorder was caused by the action of petitioners in attempting to distribute leaflets during the Mass (R. 177, 188, 192, 208, 214). Similarly, two other witnesses on behalf of petitioners testified that they were not disturbed by the passing out of the leaflets (R. 173, 196).

Father Hayda, a Roman Catholic priest called as a witness for petitioners, testified that it is a common custom among Roman Catholic churches in this country to permit distribution of literature during the Mass (R. 231, 240-241), and that this custom is recognized even though those attempting to distribute such literature are members of a dissenting or minority group within the parish (R. 262-263). He testified that this is a right which cannot be contravened by the authority of an individual church (R. 266). Father Hayda admitted on cross-examination, however, that because of his theological views on certain matters he is under discipline by the Archbishop of Washington (R. 258).

His testimony was contradicted in material part by Monsignor Arthur, Chairman of the Liturgy Commission of the Diocese, who testified as a rebuttal witness for the prosecution (R. 274). Monsignor Arthur testified that the pastor of a particular Roman Catholic church may authorize distribution of leaflets during the Mass, so long as the practice has not been otherwise forbidden by the law of the Church (R. 284). When asked whether or not leaflets could properly have been distributed during the Mass at the Blessed Sacrament Church where both the parish council and the pastor had forbidden it, he replied that the decision of the local church through its council and pastor was binding on the entire congregation (R. 285).

REASONS WHY THE WRIT SHOULD BE DENIED

Petitioners have failed to present any special or important reason why this Court should review on writ of certiorari the decision of the District of Columbia Court of Appeals.

A

The decision of the court of appeals involves nothing more than a matter of purely local significance.

The common-law offense of disturbing a religious service was first recognized in the District of Columbia in the year 1854 in *United States* v. *Brooks*, 4 D. C. (Cranch) 427 (1854), and later codified by Congress in 1892 as D. C. Code, § 22–1114 (1967), as a misdemeanor. Apparently, the case at bar is the first involving the offense to reach the appellate courts of this jurisdiction. It cannot reasonably be suggested, therefore, that an offense extant in the District of Columbia for 173 years, yet construed by its courts of appeal only once in that period, is of such significance as to call for the exercise of this Court's jurisdiction to review on writ of certiorari.

Where, as here, no more is involved than a controversy arising out of the occasional enforcement of a law of purely local application and significance, this Court, absent a clear showing of egregious error (and here there is no such showing), has consistently refused to exercise its jurisdiction. See *Griffin* v. *United States*, 336 U. S. 704 (1949); *Fisher* v. *United States*, 328 U. S. 463 (1946); *District of Columbia* v. *Pace*, 320 U. S. 698 (1944); *Del Vecchio* v. *Bowers*, 296 U. S. 280 (1935); *United Surety Co.* v. *American Fruit Co.*, 238 U. S. 140 (1915).

B

The decision of the court of appeals is not in conflict with the decisions of this Court.

Petitioners, citing and relying upon *Presbyterian Church* v. *Hull Church*, 393 U. S. 440 (1969), and *Everson* v. *Board of Education*, 330 U. S. 1 (1947), argue that the effect of the decision of the court of appeals in this case is to enforce conformity to established forms of worship prescribed by religious bodies, in violation of the First Amendment.[1] Petitioners' argument is plainly without merit. The decision of the court of appeals in no way dictated that petitioners conform to a prescribed form of worship. It merely upheld the First Amendment rights *of the members of the congregation* to freely exercise their religion and to conduct "* * * undisturbed worship * * * according to the dictates of their consciences." *Gannon* v. *Action*, 303 F. Supp. 1240, 1245 (E. D. Mo., 1969).

In response to this same argument made below, the court of appeals said:

> "* * * [W]e reject * * * [petitioners'] contention that their convictions resulted from an impermissible intrusion into a dispute among members of a church congregation over a purely religious matter. The trial court did not attempt to decide an ecclesiastical question nor to enforce religious conformity, as * * * [petitioners] would have us believe. It did not receive the testimony as to the customs and usages of Blessed Sacrament Church in order to interpret canon law or liturgical practice but solely as an aid in determining whether or not * * * [petitioners] had violated

[1] Petitioners also claim a violation of their First Amendment rights because D. C. Code, § 22-1114 (1967), gives protection to religious assemblies from disturbance "not afforded secular gatherings" (Petition, pp. 2, 7). The issue was neither raised in, nor passed upon by, the trial court. The issue is not, therefore, properly before this Court. *United States* v. *Vuitch*, 402 U. S. 62, 73 (1971); *United States* v. *Blue*, 384 U. S. 251 (1966); *United States* v. *Petrillo*, 332 U. S. 1 (1947); *United States* v. *Borden Co.*, 308 U. S. 188 (1939).

> a criminal statute; a statute which it correctly held was a guarantee of the free exercise of religion to all persons." *Riley, et al.* v. *District of Columbia*, D. C. App., 283 A. 2d 819, 824-825 (1971).

In *Presbyterian Church* v. *Hull Church*, *supra*, the issue involved a civil adjudication by a state court concerning church property rights, resolution of which necessitated an intrusion by the civil courts into controversies between church members over religious doctrines and practices. In *Everson* v. *Board of Education*, *supra*, the issue presented was whether or not public funds could be expended for bussing school children to Roman Catholic parochial schools. Neither of these cases addressed the issue presented here, namely, whether or not petitioners had a right to distribute leaflets during a church service, thereby interrupting prayer and the Mass and disturbing the pastor and many in the congregation, after having been specifically requested not to do so by the pastor.

Pertinent to the issue raised here is this Court's decision in *Martin* v. *Struthers*, 319 U. S. 141, 143, (1943), in which this Court upheld the rights of Jehovah's Witnesses to distribute to householders leaflets advertising religious meetings, but Justice Black, speaking for the Court, added: "No one supposes * * * that the First Amendment prohibits a state from preventing the distribution of leaflets in a church against the will of the church authorities."

C

The statute upon which petitioners' convictions were based, as construed by the court of appeals, is not unconstitutionally vague or overbroad.

Petitioners challenge the constitutionality of the statute upon which their convictions were based on the ground that it does not sufficiently define the legally proscribed conduct.

Petitioners cite and rely solely upon this Court's decision in *Coates* v. *City of Cincinnati*, 402 U. S. 611 (1971), in which the Court struck down a Cincinnati unlawful assembly ordinance which made it a criminal offense for "three or more persons to assemble, * * * on any of the sidewalks * * * and there conduct themselves in a manner annoying to persons passing by * * *." *Id.* This Court declared the statute to be unconstitutionally vague because "no standard of conduct is specified at all," and because the Ohio courts had placed no limiting construction on it. *Id.* at 614.

In this case, to the contrary, the District of Columbia Court of Appeals construed the statute and defined the type of conduct proscribed thereby (283 A. 2d at 823-824), saying:

> "We would agree that not every interruption of a religious service constitutes a violation of law. Certainly, to justify the imposition of criminal sanctions for disturbing a religious meeting a person must have intentionally committed an act or acts which are found to have substantially disrupted the service. A conviction cannot be had for conduct which is orderly and within the known customs and usages governing the religious exercise or proceedings in the church [footnote omitted]. On the other hand, violence of conduct is not a prerequisite for conviction of disturbing a religious meeting [footnote omitted].
>
> "A trivial incident, even if explicitly forbidden, could not be the basis of a conviction under § 22-1114.[16] Here, however, the convictions are based upon the cumulative effect of * * * [petitioners'] actions [footnote omitted] upon members of the congregation and of the clergy by disobeying a specific directive of the pastor and distributing literature during the offertory, in a precipitous manner, con-

trary to the customs and usages of the Blessed Sacrament Church; causing prayers to be interrupted and the Mass to be halted. * * * *

"For instance, a prosecution of * * * [petitioners] for disturbing a religious congregation 'by standing at an improper time', one mode of conduct proscribed by the statement which the lector read to the congregation."

The court in *State* v. *Smith*, 46 N. J. 510, 218 A. 2d 147 (1966), *cert. den.* 385 U. S. 838 (1966), was faced with a similar challenge when the defendant there charged that a like statute was vague because it did not spell out sufficiently the details of a disturbance which constituted the offense. The statute provided that:

"Any person who by noisy or disorderly conduct disturbs or interferes with the quiet or good order of any place of assembly, public or private, including schools, churches, libraries and reading rooms, is a disorderly person." 218 A. 2d at 149.

In upholding the constitutionality of the statute, the New Jersey Supreme Court said:

"* * * Of course, the statute does not * * * [spell out the details of the disturbance constituting the offense] in specific terms, and it may be doubted that the ingenuity of man could meet that demand if the Constitution made it. But the Constitution does not insist upon the impossible. It asks only what the subject will reasonably permit, and hence if there is a public interest in need of protection, due process does not stand in the way *merely because the subject defies minute prescription.*

"The statute before us meets the constitutional demand. It speaks of 'noisy or disorderly conduct' which 'disturbs or interferes with the quiet or good order' of 'any place of assembly, public or private.' Surely, a man of ordinary intelligence knows the council chamber [the place where the disturbance occurred] at the time of a public hearing is a public 'place of assembly.' So, too, such a man knows the 'quiet or good order' of a place depends upon the nature and the purpose and the needs of the meeting. He also knows a legislative chamber from a barroom or a ball park and knows what kind of behavior comports with each." 218 A.2d at 151-152; emphasis supplied.

See also: *State* v. *Davis*, 21 Ohio App. 2d 261, 257 N. E. 2d 79 (1969); *People* v. *Malone*, 156 App. Div. 10, 141 N. Y. S. 149 (1913); *State* v. *Olson*, 287 Minn. 300, 178 N. W. 2d 230 (1970); *Ford* v. *State*, 210 Tenn. 195, 355 S. W. 2d 102 (1962), *cert. den.* 377 U. S. 994 (1964); *State* v. *Besson*, 110 N. J. Super. 528, 266 A.2d 175 (1970).

CONCLUSION

Upon the foregoing, it is respectfully submitted that the petition for writ of certiorari should be denied.

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